

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

TSANN KUEN (ZHANGZHOU)
ENTERPRISE CO., LTD.

Plaintiff,

v.

HUAYU ELECTRICAL APPLIANCE
GROUP CO., LTD., and AMAZON.COM,
INC.,

Defendants.

Case No.

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, Tsann Kuen (Zhangzhou) Enterprise Co., Ltd. (“Tsann Kuen”) brings this action under the patent laws of the United States, Title 35 of the United States Code, and makes the following allegations against Huayu Electrical Appliance Group Co., Ltd. (“Huayu”), and Amazon.com, Inc. (“Amazon” or “Retailer,” collectively “Defendants”):

THE PARTIES

1. Plaintiff Tsann Kuen is a Chinese company having a principal place of business at Tsann Kuen Industrial Park, Taiwanese Investment Zone, Zhangzhou, Fujian, China.

2. Upon information and belief, Defendant Huayu is a Chinese company headquartered at No. 168, North Ring Road, Zhouxiang Town, Cixi City, Zhejiang, China. Huayu may be served pursuant to the provisions of the Hague Service Convention.

3. Upon information and belief, Huayu manufactures, imports, sells and offers to sell the below accused products that are subsequently sold downstream by third-parties including Amazon.

4. Upon information and belief, Defendant Amazon is a Delaware corporation headquartered at 410 Terry Avenue North, Seattle, WA 98109. Upon information and belief, Amazon may be served with process via its registered agent: Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware, 19808. Upon information and belief, Amazon does business in Texas and in the Eastern District of Texas, directly or through intermediaries.

5. Upon information and belief, Defendant Amazon, by itself and/or through its subsidiaries, operates one or more “Fulfillment Centers” within this Judicial District. Amazon has a regular and established place of business in this Judicial District, including, e.g., distribution facilities, employees, and other business. For example, upon information and belief, Amazon has a distribution center located at 15201 Heritage Pkwy, Fort Worth in Denton County. Upon information and belief, Defendant and/or its subsidiaries employ individuals within this Judicial District responsible for the distribution of its products including those accused of infringement below.

JURISDICTION AND VENUE

6. This is an action for patent infringement under the patent laws of the United States of America, 35 U.S.C. § 1, *et seq.*

7. This Court has jurisdiction over the subject matter of this action including at least under 28 U.S.C. §§ 1331 and 1338(a).

8. This Court has personal jurisdiction over Huayu including at least because it, directly or through its subsidiaries, divisions, groups, or distributors, has sufficient minimum

contacts with the United States. On information and belief, Huayu meets the criteria of Fed. R. Civ. P. 4(k)(2).

9. In the alternative, Huayu has sufficient minimum contacts with the State of Texas for this court to exercise personal jurisdiction. On information and belief, Huayu transacts substantial business in the State of Texas, directly or through agents, including: (i) at least a portion of the infringement alleged herein, and (ii) regularly does or solicits business in Texas, engages in other persistent courses of conduct, purposefully avails itself of the privilege of doing business in Texas, and/or derives substantial revenue from services provided in Texas.

10. As set forth in *Brunette Machine Works v. Kockum Industries, Inc.*, 406 U.S. 706 (1972), venue is proper for Huayu in this Court pursuant to 28 U.S.C. §§ 1391 and 1400(b) at least because Huayu is a foreign entity.

11. This Court has personal jurisdiction over Amazon including at least because it, directly or through its subsidiaries, divisions, groups, or distributors, has sufficient minimum contacts with the State of Texas for this court to exercise personal jurisdiction. On information and belief, Amazon transacts substantial business in the State of Texas, directly or through agents, including: (i) at least a portion of the infringement alleged herein, and (ii) regularly does or solicits business in Texas, engages in other persistent courses of conduct, purposefully avails itself of the privilege of doing business in Texas, and/or derives substantial revenue from services provided in Texas.

12. Venue is proper in this judicial district under 28 U.S.C. § 1400(b).

13. Upon information and belief, Amazon operates distributions centers in this district including at least a distribution center located at 15201 Heritage Pkwy, Fort Worth, 76177 in Denton County.

14. Upon information and belief, Amazon's distribution centers in the district are regular and established physical places of business through which Amazon transacts business.

15. Upon information and belief, Amazon distributes products, including those accused of infringement in this case, to residents of the district who place orders through Amazon's website.

16. Upon information and belief, Amazon markets, sells, and delivers products, including the accused products, to customers in this district.

FACTUAL ALLEGATIONS

17. Shuhui Chang is the sole inventor of U.S. Patent No. 8,915,179 ("179 Patent" or "Asserted Patent") issued on December 23, 2014. This patent claims priority to a foreign patent application that issued as Chinese Patent No. 2006 1 0069596.6 (the "596 Patent").

18. The claims of the Asserted Patent are directed toward a rotary waffle maker with a removable collecting plate that can be stored in a vertical position by fitting the edge of the collecting plate into a groove in the waffle maker support.

19. The Asserted Patent was assigned to Tsann Kuen, the Plaintiff in this action.

20. Tsann Kuen manufactures waffle makers covered by the '179 Patent that have been imported into and sold in the United States since at least July 2007 under the brand names Bialetti, Bella, Oster, Cooks, and Black & Decker. These Tsann Kuen waffle makers include, for example, model numbers TSK-2126, TSK-2909, TSK-2901, and TSK-2904.

21. On information and belief, since at least 2016, Huayu has manufactured unlicensed competing waffle makers comprising all the elements of one or more claims of the '179 Patent.

22. In January 2018, a complaint was filed against Huayu in the Intermediate People's Court of Ningbo Municipality ("Chinese Action") asserting infringement of the '596 Patent through the manufacture of waffle makers in China.

23. On information and belief, Huayu was aware of the '596 Patent and the corresponding Asserted Patent since at least the Chinese Action.

24. On information and belief, since at least 2016, Huayu has manufactured waffle makers practicing the Asserted Patents for sale in the United States under brand names including Oster, including but not limited to product model numbers CKSTWFBF10W-TECO, CKSTWFBF10MR-TECO, CKSTWFBF10W-ECO, CKSTWFBF10MR-ECO, and CKSTWFBF10W-ECO-WM ("Infringing Products"). On information and belief, Huayu since at least 2016 has made these products specifically for sale in the United States and at least has offered for sale, sold and imported the Infringing Products into the United States. On information and belief, Huayu has been aware that the Infringing Products infringe the Asserted Patent, since at least the filing of the Chinese Action.

25. On information and belief, Huayu has supplied and continues to supply the Infringing Products to third-parties ("Third-Party-Resellers") in the United States. On information and belief, since at least 2016 Huayu has offered to sell, sold, and/or imported the Infringing Products to Third-Party Resellers in the United States and in this district, which subsequently sold the Infringing Products in the United States to retailers including, for example, Amazon, Best Buy, Sears, Target, and Walmart. In addition, on information and belief, Huayu has taken these actions while being aware of the Asserted Patent with the knowledge that these products were to be imported into the United States, offered for sale, and sold within the United States including this judicial district.

26. On information and belief, Huayu has voluntarily and purposely placed the Infringing Products into the stream of commerce with the expectation that they would be offered for sale and sold in Texas and in this judicial district.

27. On information and belief, Amazon directly or through its subsidiaries, divisions, groups, or distributors, offers to sell and sells the Infringing Products through its website.

28. Defendants are properly joined in this action because (a) Plaintiff's claims herein are based on the same transaction(s), occurrence(s) or series of transactions or occurrences relating to Defendants' making, using, offering for sale, and selling of the accused products and processes; and (b) questions of fact common to all Defendants will arise in the action. For example, Huayu is the upstream seller of Infringing Products sold by the downstream Retailer.

COUNT I
(Infringement of the '179 Patent)

29. Tsann Kuen repeats and re-alleges the allegations contained in paragraphs 1-28 of this Complaint as if fully set forth herein.

30. The '179 Patent entitled "Muffin Baker" was duly and legally issued by the U.S. Patent and Trademark Office on December 23, 2014 from Application No. 12/668,909 claiming priority to Patent Cooperation Treaty application PCT/CN2007/003113 filed on November 2, 2007, based on Chinese application 2006 1 0069596 filed on November 3, 2006, which issued as the '596 Patent. A true and accurate copy of the '179 Patent is attached hereto as Exhibit A.

31. Each and every claim of the '179 Patent is valid and enforceable, and each enjoys a statutory presumption of validity under 35 U.S.C. § 282.

32. Tsann Kuen exclusively owns all rights, title, and interest in and to the '179 Patent and possesses the exclusive right of recovery, including the exclusive right to recover for past infringement.

33. Claim 1 of the '179 Patent recites:

Claim 1. A waffle maker comprising:

- a support provided with a pedestal, at least one support arm provided with a rotary device, and a first inosculating portion;
- a main body connected to said rotary device;
- a collecting plate mounted on said support device and provided with a second inosculating portion used for connecting with said first inosculating portion when said main body is in a storage position;
- wherein the normal line of said collecting plate is perpendicular to the normal line of said pedestal when the collecting plate is in the storage position;
- wherein said first inosculating portion is a groove, and said second inosculating portion is an edge of said collecting plate.

34. The Infringing Products, such as the exemplary Oster Flip Waffle Maker model number CKSTWFBF10MR-TECO ("Oster Flip Waffle Maker") sold by Amazon, are waffle makers that infringe one or more claims of the '179 Patent, including, for example, claim 1. The Infringing Products comprise a support provided with a pedestal with at least one support arm provided with a rotary device. The Infringing Products also include a main body connected to said rotary device. In addition, the Infringing Products include a collecting plate mounted on said supporting device.

35. Consistent with disclosed advantages of the '179 Patent, the Infringing Products are designed for compact storage. Specifically, they include a first inosculating portion which is a groove and a second inosculating portion, which is the edge of the collecting plate. For example, the Oster Flip Waffle Maker has a groove located on the pedestal of the support. When the Infringing Products are in the storage position, the edge of the collecting plate is set in the groove with the normal line of the collecting plate perpendicular to the normal line of said pedestal.

36. The Infringing Products practice all the elements of at least claim 1 of the Asserted Patent.

37. Upon information and belief Huayu has had actual notice of the '179 Patent since at least the filing of the Chinese Action on January 3, 2018 and this lawsuit, that the Infringing Products would infringe at least claim 1 of the '179 Patent.

38. On information and belief, Huayu has been and is now directly infringing, literally and/or under the doctrine of equivalents, one or more claims, including at least claim 1 of the '179 Patent, by importing, selling, and/or offering to sell the Infringing Products in the United States under 35 U.S.C. § 271(a).

39. Amazon is now directly infringing, literally and/or under the doctrine of equivalents, one or more claims, including at least claim 1 of the '179 Patent, by selling and/or offering to sell the Infringing Products in the United States under 35 U.S.C. § 271(a).

40. As described in paragraphs 22 to 26, Huayu was aware of the Asserted Patent since at least the Chinese Action and knew that the Infringing Products would be imported into the United States where they were to be used, sold or offered for sale. On information and belief, Huayu has been and is now indirectly infringing, literally and/or under the doctrine of equivalents, one or more claims, including at least claim 1 of the '179 Patent, by inducing Third-Party Resellers to import, use, sell, and/or offer to sell the Infringing Products in the United States under 35 U.S.C. § 271(b).

41. As a result of Defendants' infringement of the '179 Patent, Tsann Kuen has suffered and continues to suffer damages. Thus, Tsann Kuen is entitled to recover from Huayu the damages Tsann Kuen sustained as a result of Huayu's wrongful and infringing acts in an amount no less than its lost profits and/or a reasonable royalty, together with interest and costs fixed by this Court under 35 U.S.C. § 284.

42. Tsann Kuen has suffered damage because of the infringing activities of Defendants, their officers, agents, servants, employees, associates, partners, and other persons who are in active concert or participation therewith, and Tsann Kuen will continue to suffer irreparable harm for which there is no adequate remedy at law unless Defendants' infringing activities are preliminarily and permanently enjoined by this Court.

43. Huayu's infringement of the '179 Patent was, is, and continues to be deliberate and wilful because Huayu was and is on notice of the '179 Patent at least as early as January 3, 2018 due to the Chinese Action, yet it continued and continues to infringe the '179 Patent.

44. Amazon's continued infringement of the '179 Patent is deliberate and wilful because Amazon is on notice of the '179 Patent at least as of the filing of this complaint.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Tsann Kuen respectfully requests that this Court enter:

- A. A judgment that the Asserted Patent is valid and enforceable.
- B. A judgment in favor of Tsann Kuen that the Defendants have and are infringing the Asserted Patent;
- C. A judgment declaring Defendants' infringement to be willful.
- D. A judgment declaring that this case is exceptional within the meaning of 35 U.S.C. § 285;
- E. A permanent injunction enjoining Defendants, their officers, directors, agents, servants, employees, associates, partners, and other persons who are in active concert or

- participation with Defendants, from infringing the Asserted Patent and/or such other equitable relief the Court determines is warranted in this case;
- F. A judgment and order requiring the Defendants to pay to Tsann Kuen its damages, enhanced damages, costs, expenses, prejudgment and post-judgment interest, and attorneys' fees, if applicable, for the Defendants' infringement of the Asserted Patent as provided under 35 U.S.C. §284 and/or §285, and an accounting of ongoing post-judgment infringement; and
- G. Any and all other relief, at law or in equity that this Court deems just or proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Tsann Kuen hereby demands a trial by jury of all issues so triable.

Dated: November 15, 2018

Respectfully submitted,

/s/ Korula T. Cherian

Elizabeth L. DeRieux (State Bar No. 05770585)

Capshaw DeRieux, LLP

114 E. Commerce Ave.

Gladewater, TX 75647

Telephone: 903-845-5770

ederieux@capshawlaw.com

Ronald Wielkopolski

RuyakCherian LLP

1700 K St. NW, Suite 810

Washington, DC 20006

ronw@ruyakcherian.com

Korula T. Cherian

Robert Harkins

Song Zhu
RuyakCherian LLP
1936 University Ave, Ste. 350
Berkeley, CA 94702
sunnyc@ruyakcherian.com
bobh@ruyakcherian.com
songz@ruyakcherian.com

ATTORNEYS FOR PLAINTIFF